



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 211119-0240]

RIN 0648-BK66

Pacific Island Fisheries; Rebuilding Plan for Guam

Bottomfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement a rebuilding plan that includes annual catch limits (ACL) and accountability measures (AM) for the overfished bottomfish stock complex in Guam. This action is necessary to rebuild the overfished stock consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: NMFS must receive comments by *[insert date 45 days after date of publication in the **FEDERAL REGISTER**]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0104, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2021-0104 in

the Search box, click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record, and NMFS will generally post them for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council (Council) prepared Amendment 6 to the Fishery Ecosystem Plan for the Mariana Archipelago (FEP), which includes a draft environmental assessment (EA) and Regulatory Impact Review. Copies of Amendment 6 and other supporting documents are available at www.regulations.gov, or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Kate Taylor, NMFS PIR Sustainable Fisheries, 808-725-5182.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Guam bottomfish fishery under the FEP and implementing regulations. The Guam fishery harvests 11 species of emperors, snappers, groupers, and jacks. There are more than 300 participants in the fishery. Most (73.6 percent) of the bottomfish habitat is in territorial waters (generally from the shoreline to 3 nautical miles (5.6 km) offshore), with the rest in Federal waters (i.e., the U.S Exclusive Economic Zone) around offshore banks to the northeast and southwest of Guam. Fishing is mostly from vessels less than 25 ft (7.6 m) in length close to shore, targeting shallow-water species for recreational, subsistence, and small-scale commercial purposes. A few larger vessels make trips to offshore banks to harvest deepwater species primarily for commercial purposes.

There is no mandatory reporting catch data collection system in Guam. The Guam Division of Aquatic and Wildlife Resources (DAWR) collects fishery catch information from fishermen through voluntary creel surveys, and commercial sales data from the commercial receipt book program. NMFS requires large vessels (>50 ft, 15.2 m) that fish in Federal waters to hold a Federal permit and report their catch; there are no current Federal permits holders. The NOAA Office of Law Enforcement and the U.S. Coast Guard are

responsible for the enforcement of regulations in Federal waters and Guam's Department of Agriculture Law Enforcement Section is responsible for the enforcement of regulations in territorial waters.

Since 2001, the fishery has landed between 11,711 (5,312 kg) and 54,062 lb (24,522 kg) annually. The most recent 3-year average (2018-2020) Guam bottomfish catch (from both Federal and territorial waters) was 27,306 lb (12,386 kg), and the fishery landed 18,933 lb (8,588 kg) in 2020. Although bottomfish have accounted for only 10-15 percent of Guam's boat-based fish harvest, bottomfish hold fundamental dietary and cultural importance for the people of Guam. Federal waters around Guam remain important for the harvest of deepwater snappers at offshore banks to provide locally sourced bottomfish.

On February 10, 2020, NMFS notified the Council that the Guam bottomfish stock complex was overfished, but not subject to overfishing (85 FR 26940, May 6, 2020). Bottomfish are considered to be overfished when the stock complex's biomass (B) declines below the level necessary to produce the maximum sustainable yield (MSY) on a continuing basis. Consistent with section 304(e) of the Magnuson-Stevens Act and implementing regulations at 50 CFR 600.310(j), the Council must prepare, and NMFS must implement a rebuilding plan within two years of the notification. The rebuilding plan must specify the

timeframe for rebuilding the Guam bottomfish stock complex's biomass to B_{MSY} , which is the long-term average size of the stock complex that would be achieved by fishing at maximum sustainable yield. The rebuilding timeframe must be as short as possible, taking into account the status and biology of the overfished stock, the needs of fishing communities, and the interaction of the overfished stock of fish within the marine ecosystem and cannot exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise. The rebuilding must also have at least a 50 percent probability of attaining the B_{msy} , where such probabilities can be calculated.

If approved, Amendment 6 would implement a rebuilding plan for the Guam bottomfish stock complex that consists of an ACL and two AMs. We would set the ACL at 31,000 lb (14,061 kg) starting in 2022. Because the complex exists in both territorial and Federal waters around Guam, we are obligated to manage the stock throughout its range and would count harvests from territorial and Federal waters toward the ACL. However, existing data collection programs do not differentiate catch from territorial versus Federal waters.

As an in-season AM, if NMFS projects that the fishery will reach the ACL in any year, then we would close the fishery in Federal waters for the remainder of that year. Because Guam does not currently have regulations in place to implement a complementary ACL and in-season AM in territorial waters, as an additional AM, if subsequent analyses indicate that the fishery exceeded the ACL during a year, we would close the fishery in Federal waters until NMFS and the Territory of Guam implement a coordinated management approach and implement regulations to ensure that the catch in both Federal and territorial waters is maintained at levels that allow the stock to rebuild to B_{msy} . The rebuilding plan would remain in place until NMFS determines that the stock complex is rebuilt, which is expected to take nine years. This rebuilding plan was selected because it allows for the least disruption to the fishing community and minimizes negative socio-economic impacts while still rebuilding the stock complex within the 10-year period required by the Magnuson-Stevens Act. NMFS and the Council would review the rebuilding plan routinely every two years and modify it, as necessary, per section 304(e) (7) of the Magnuson-Stevens Act.

NMFS must receive comments on this proposed rule by the date provided in the **DATES** section. NMFS is also soliciting comments on proposed Amendment 6, as stated in the Notice of Availability (NOA) published on November 15,

2021 (86 FR 62982). NMFS must receive comments on the NOA by January 14, 2022. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. NMFS will consider comments on the NOA and this proposed rule in our decision to approve, disapprove, or partially approve Amendment 6.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed action is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed rule.

The Guam bottomfish fishery consists of the shallow water component and deepwater component, with an estimated 300 or more participants. The shallow water component is

likely larger than the deepwater component in terms of catch and effort due to the lower expense and ease of fishing close to shore. Smaller fishing vessels (< 25 ft, 7.6 m) comprise most of the Guam bottomfish fishing fleet, and tend to target shallow water bottomfish species for recreational, subsistence, and small-scale commercial purposes. The few relatively large vessels in the fishery are more likely to target the deepwater complex at offshore banks and primarily fish for commercial reasons, although small non-commercial boats do fish offshore. Fishermen sometimes combine bottomfish fishing with other methods of harvest such as trolling, spearing and jigging, and many commercial fishermen supplement their bottomfish fishing effort with trolling for pelagic fish. Guam's bottomfish fishery is highly seasonal with fishing effort higher during the summer months. Although bottomfish fishing has only accounted for 10 to 15 percent of Guam's long-term boat-based fisheries harvest, bottomfish hold fundamental dietary and cultural importance for the people of Guam. Fishing grounds in Federal waters around Guam remain important for the harvest of deepwater snappers at offshore banks to provide locally sourced bottomfish the island's inhabitants, and the extensive community networks for sharing locally caught fish suggest that it is likely that the social benefits of fishing are widely shared by many of Guam's long-term residents. Bottomfish catch ranged from

11,711 lb (5,312 kg) to 31,760 lb (14,406 kg) between 2012 and 2020, and the catch over the last three years averaged 27,306 lb (12,386 kg). The Guam bottomfish fishery has been managed with ACL and AMs since 2012 and although catch from both territorial waters and Federal waters count toward the ACL, catch reports do not specify whether the bottomfish catch came from territorial or Federal waters.

Bottomfish catches in the fishery has surpassed 31,000 lb (14,061 kg) only twice in the past 10 years: 31,226 lb (14,164 kg) in 2018 and 31,760 lb (14,406 kg) in 2019. We do not expect the fishery to reach the proposed ACL, but it is possible, and we anticipate a 30 percent probability of a closure in Federal waters. If the fishery exceeds the ACL, the fishery will be subject to the higher performance standard for subsequent years, which would close the bottomfish fishery in Federal waters until a coordinated management approach is developed to ensure both Federal and territorial waters can be maintained at levels that allow the stock to rebuild. The direct economic effects annually of closing Federal waters is evaluated using the recent three year average catch (27,306 lb, 12,386 kg) and assuming that the proportion of bottomfish habitat in Federal and territorial waters (26.4 and 73.6 percent respectively) reflect the proportion of catch. If Federal waters are closed, NMFS estimates that an estimated 7,209 lb (3,270 kg) that might have ordinarily been caught in

Federal waters would not be caught and 20,097 lb (9,116 kg) would still be caught in territorial waters. The reduction in catch could be offset if fishing effort in Federal waters relocates to territorial waters (assuming the Guam government does not implement complementary measures in territorial waters). Additionally, fishery participants might decrease fishing effort as the fishery approaches the ACL in order to avoid a fishery closure in Federal waters. If complementary measures were implemented in territorial waters and the fishery exceeded the ACL, then catch would be 0 lb for every subsequent year after the closures until the stock is rebuilt or the rebuilding plan is modified based on the best scientific information available.

With regard to revenue, with expected catch at 27,306 lb (12,386 kg) and roughly 17.5 percent of that catch sold at \$4.82/lb (\$10.56/kg), the total expected fishery-wide revenue is \$23,283, which is similar to recent years. If the fishery exceeds the ACL and Federal waters are closed, there would be an expected loss of revenue of \$6,081, or over \$20 per fishery participant for every subsequent years of the rebuilding plan compared to the status quo, assuming fishermen do not transfer effort to territorial waters. However, fishermen could offset loss in revenue by selling some of their catch that had been intended to be retained or shared (non-commercial catch) or by relocating fishing effort to territorial waters, which could remain open.

The fishery is not expected to substantially change the way it fishes with respect to fishing gear, fishing effort, participation, or intensity, but may change slightly with respect to total catch and areas fished, with the fishermen who would normally choose to fish in Federal waters being affected more adversely. Larger impacts would occur if the Guam government implemented a complementary closure in territorial waters. While limiting total bottomfish catches to 31,000 lb (14,061 kg) annually may result in short-term economic impacts to Guam bottomfish participants, rebuilding stock biomass to B_{MSY} is expected to increase the exploitable biomass, which in turn is expected to provide for long-term sustainability of fishery resources while allowing fishery participants to continue to benefit from their use.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels subject to the proposed action are small entities, i.e., they are

engaged in the business of finfish harvesting (NAICS code 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels.

The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate adverse economic impacts from the proposed rule based on home port, gear type, or relative vessel size. The proposed rule will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR 665

Administrative practice and procedure, Bottomfish,
Guam, Fisheries, Fishing, Mariana, Pacific Islands.

Authority: 16 U.S.C. 1801, et seq.

Dated: November 19, 2021.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory
Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes
to amend 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665
continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.405, add paragraphs (g) and (h) to read as follows:

§ 665.405 Prohibitions

* * * * *

(g) Fish for or possess any Mariana Bottomfish MUS as defined in § 665.401 in the Guam Management Subarea after a closure of the fishery in violation of § 665.409(d).

(h) Sell or offer for sale any Mariana Bottomfish MUS as defined in § 665.401 in the Guam Management Subarea after a closure of the fishery in violation of § 665.409(e)

3. Revise § 665.408 to read as follows:

§ 665.408 CNMI Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

(a) In accordance with § 665.4, the ACL and ACT for Mariana bottomfish MUS in the CNMI Management Subarea for each fishing year is as follows:

Table 1 to paragraph (a)

	2021	2022	2023
ACL (lb)	84,000	84,000	84,000
ACT (lb)	78,000	78,000	78,000

(b) If the average catch of the three most recent years exceeds the specified ACL in a fishing year, the Regional Administrator will reduce the ACL and the ACT for the subsequent year by the amount of the overage in a separate rulemaking.

4. Add § 665.409 to read as follows:

§ 665.409 Guam Annual Catch Limits (ACL).

(a) In accordance with § 665.4, the ACL for Mariana bottomfish MUS in the Guam Management Subarea is 31,000 lb.

(b) When NMFS projects the ACL will be reached, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, through the end of the fishing year in which the catch limit is reached.

(c) If the ACL is exceeded in any fishing year, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register. The fishery will remain closed until such time that a coordinated approach to management is developed and regulations are implemented that ensures catch in both Federal and territorial waters can be maintained at levels that allow the stock to rebuild or the rebuilding plan is modified based on the best scientific information available.

(d) On and after the date the fishery is closed as specified in paragraphs (b) or (c) of this section, fishing for and possession of Mariana bottomfish MUS is prohibited in the Guam Management Subarea, except as otherwise authorized by law.

(e) On and after the date the fishery is closed as specified in paragraphs (b) or (c) of this section, sale, offering for sale, and purchase of any Mariana bottomfish MUS caught in the Guam Management Subarea is prohibited.

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